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C O N F I D E N T I A L BRUSSELS 005215

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TAGS: [PREL](#) [EAID](#) [HR](#) [EUN](#) [USEU](#) [BRUSSELS](#)

SUBJECT: NEGOTIATIONS CONTINUE ON TERMS FOR CROATIAN EU
ACCESSION NEGOTIATIONS

REF: A. BRUSSELS 5125

[B.](#) THE HAGUE 3133

[C.](#) BUDAPEST 3181

[D.](#) VALLETTA 1099

Classified By: Rick Holtzapple, PolOff, Reasons 1.4 (B/D)

SUMMARY

[¶1.](#) (C) The Dutch text on Croatia that will be presented to EU FMs at the GAERC on December 13 should be unchanged from their original proposal (ref B). But Austria, now with support from Luxembourg, can be expected to push alternative language that gets ICTY conditionality the wrong way around. A key factor would be getting those Member States who have been non-committal, or waffling, to reaffirm the EU's commitment to conditionality. END SUMMARY.

[¶2.](#) (C) Luxembourg, wearing its hat as the incoming EU Presidency, on December 8 suggested to the EU Permanent Representatives Committee (COREPER) unhelpful amendments to the Dutch-proposed text for the December 17 European Council (EU Summit) Conclusions on Croatia. Rather than the Dutch proposal, where the EU would set a date to begin EU accession negotiations with Croatia "provided that full cooperation with ICTY has been confirmed by the Council", the Luxembourg PermRep proposed to "switch the key" so that the EU would begin negotiations on the date fixed UNLESS the Council finds that Croatia is not fully cooperating with ICTY. Luxembourg coupled these proposal with the announcement that they have already invited ICTY Prosecutor Carla del Ponte to attend the February 2005 GAERC, and therefore argued this would provide a reliable trigger for a Council decision, if required.

[¶3.](#) (C) Member States favoring strict ICTY conditionality expressed some surprise, and annoyance, at the Luxembourg initiative. They told us they had expected such a tactic from Austria and/or Germany, but were not pleased to see the incoming Presidency land so solidly in that camp.

[¶4.](#) (C) COREPER briefly debated the Luxembourg proposal on December 9 during an extended and restricted COREPER session. Sources told us the chair, Dutch Ambassador Tom De Bruijn opened the discussion saying there were "bigger fish to fry" (i.e., Turkey), and the Presidency had no intention revising the text further, and so would stick with its original text on Croatia. The UK and others who have suggested not including a date in the Conclusions said they would desist, if the Presidency's approach was adopted. Luxembourg, supported by Austria and Germany, however, raised their proposal, but there was no consensus. The Dutch text, therefore, will be that presented to the GAERC on December 13, and the Dutch are unlikely to invite further debate on it there (although at some point a date needs to be inserted). A UK source said, however, that most Member States expect the Austrians to raise the issue.

[¶5.](#) (C) A Belgian contact told us the GOB very much hoped to reach consensus on the Croatia text at as low a level as possible. FM de Gucht has taken a strong stance on ICTY conditionality after being personally persuaded by del Ponte that the Croatians were hood-winking the EU; but the Belgian position could weaken if the Croatia issue is debated fully at Heads level, where German and Austrian Chancellors Schroeder and Schuessel continue to campaign actively for weak conditionality. Our British contact noted that, whatever might be agreed at among Ambassadors or even FMs, there would always remain a good chance of an Austrian or German "ambush" at the Summit on December 17.

[¶6.](#) (C) Assuming the Dutch will not be able to avoid any further re-opening of the text, the position taken by some of the uncommitted Member States will be important. The UK, Sweden, Belgium, and Latvia are definitely among those clearly favoring conditionality. Slovenia has been waffling, apparently as it evaluates how best to advance its own bilateral issues with Croatia. But FM Rupel is almost certain to speak up, and at length, if the issue gets opened at the GAERC, and it would be helpful to know which way he will go. A contact here also indicated they had heard Madrid was considering coming out in support of the Dutch text as the best way forward. If FM Moratinos would do so at the GAERC it would give the conditionality camp a big boost. In the other direction, we note that some other Member States such as Hungary and Malta (Refs C and D) are moving more

solidly into group favoring an easing off on conditionality.

MCKINLEY